

KIRKLAND & ELLIS

PARTNERSHIPS INCLUDING PROFESSIONAL CORPORATIONS

655 Fifteenth Street, N.W.
Washington, D.C. 20005

Neil L. Levy
To Call Writer Directly:
(202) 879-5116
neil_levy@dc.kirkland.com

202 879-5000

Facsimile:
202 879-5200

Via Messenger

Karl Gleaves
Assistant General Counsel for Occ
1305 East-West Highway
SSMC 4, Room 6111
Silver Spring, MD 20910

Re: Request of the Village of Croton-on-Hudson for Permission to File an *Amicus* Reply Brief in the Appeal of Millennium Pipeline Company, L.P.

Dear Mr. Gleaves:

On behalf of the Village of Croton-on-Hudson, New York ("Village"), we are writing to respectfully request that the Secretary of Commerce ("Secretary") grant the Village permission to file an *amicus* reply brief in the appeal of the Millennium Pipeline Company, L.P. ("Millennium"). We also request the Secretary review this request on an expedited basis and notify us of its decision as early as possible prior to the close of the public comment period on January 8, 2003.

Permitting the Village to file an *amicus* reply brief is consistent with past practice and with the Secretary's previous letter granting the Village *amicus* status for the purpose of filing an initial brief in this proceeding.¹ In particular, we note that in that letter, the Secretary informed us that "[i]f it chooses, the Village may seek subsequent permission to file a reply brief as an *amicus* when the time is appropriate." As such, we see this request as an uncontroversial one, but nonetheless offer the following rationales.

As recognized by the Secretary in that prior decision, granting the Village the ability to participate in this appeal as an *amicus* is appropriate in light of the Village's unique access to information regarding factual and legal issues germane to this proceeding. Granting the Village permission to file an *amicus* reply brief is similarly appropriate as it would allow the Village to

¹ Letter from James R. Walpole, U.S. Department of Commerce, to Neil L. Levy, Kirkland & Ellis (representing the Village) dated July 17, 2002 (citing Consistency Appeal of Amoco Production Company, July 20, 1990 at ii).

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respond fully to the public comments submitted by individuals, organizations, and federal agencies. Many of these comments relate directly to and raise new information regarding the pipeline's effects on the Village and regarding the alternative routes discussed in the Village's Initial Brief and engineering report. As many of these impacts and alternatives are the central issues on appeal, and given the Village's special role in developing the administrative record in this regard, we feel strongly that the Village should have an opportunity to fully review and respond to all comments on these issues that are submitted through the end of the public comment period.

Furthermore, we anticipate that Millennium is also preparing an extensive response to the impacts and alternatives raised by the Village. Millennium may submit new engineering or environmental data to the record, including potentially new data developed since the initial briefs and/or previously existing reports which, to date, have not been made available for public review. The consistency appeal process is unique in that it allows the parties or any other person to develop and submit to the Secretary new data concerning alternatives to the proposed activity throughout the appeal.² It is this open information gathering process that distinguishes administrative consistency appeals from judicial appellate proceedings. As such, limiting *amici* to one opportunity to comment in the form of an initial brief at the outset of this process would be inappropriate in the context of this proceeding. Given the Village's special role in developing the administrative record to date, the Secretary should grant the Village an opportunity to review and respond to new data and issues raised in the public comments and in Millennium's reply brief.

Finally, the Village has recently obtained, and is in the process of reviewing, new information concerning its water supply; the Village would appreciate the opportunity to fully brief the Secretary on these matters during the reply brief stage of this proceeding.

We understand that a reply brief schedule has not yet been established for this proceeding, but believe that "the time is appropriate" for this request. Particularly as the public comment period in this appeal will close on January 8, 2003, it is imperative that the Village be informed of its reply status prior to that date, so that the Village may submit public comments if necessary. We therefore respectfully request the Secretary to consider this petition on an expedited basis and to notify us of its decision as soon as possible prior to January 8, 2003.

² 15 C.F.R. § 930.121(c) ("When determining whether a reasonable alternative is available, the Secretary may consider . . . alternatives described in the objection letters and alternatives and other new information described during the appeal.") (emphasis added).

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Sincerely,

A handwritten signature in dark ink, appearing to read "Neil L. Levy", written over a horizontal line.

Neil L. Levy
Christian C. Semonsen
KIRKLAND & ELLIS
655 Fifteenth Street, N.W.
Suite 1200
Washington, DC 20005
(202) 879-5000

**Counsel for The Village of Croton-on-Hudson,
New York**

cc: Mr. Glen T. Bruening
Mr. Frederic G. Berner, Jr.